IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE EIGHTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 24446 of 2004

Between:

Gampala Narasimha Reddy, S/o. Raghava Reddy,
R/o. Bogaram Village, Ramannapet Mandal, Nalgonda District.

..... PETITIONER

AND

1 The Deputy Commissioner of Endowments, Hyderabad, Tilak Road,

Hyderabad.
2 The Asst. Commissioner of Endowments, Nalgonda District,

Nalgonda.
3 Jalla Markendeya, S/o. late J. Ramchandraiah,
R/o. H.No. 18-99/3, Road No. 5, Kamalanagar, Chitanyapuri,

Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to pass an order, direction or writ more particularly one in the nature of writ of Mandamus declaring the action of the 2nd respondent in passing proceedings in R.Dis. No. B/3808/1997, dated 25-3-1998 wherein the 2nd respondent recognized the 3rd respondent as member of founder family of Sri Anjaneya Swamy Temple, Bogaram Village, Ramannapet Mandal, Nalgonda District as illegal, arbitrary and without jurisdiction and also against the provisions of A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1997 consequently set aside the impugned order by declaring that the 3rd respondent is not a member of founder family and pass such other and further orders.

Counsel for the Petitioner: MR.K.S.MURTHY

Counsel for the Respondents No.1 and 2: GP FOR ENDOWMENTS

Counsel for the Respondent No.3: Mr D.Goverdhana Chary

The Court at the stage of admission made the following ORDER:

The petitioner is a resident of Bogaram village, Ramannapet mandal, Nalgonda district. There is a temple of Sri Anjaneya Swamy in that village. Through his proceedings, dated 25.03.1998, the Assistant Commissioner of Endowments, Nalgonda, the second respondent, recognized the third respondent as a member of founder family of the temple. The petitioner challenges the same. According to him, the family of the third respondent did not construct the temple and the same has been existing for more than 150 years. He states that the family of the third respondent has nothing to do with the temple, except that the third respondent continued as the Chairman of the Trust Board for quite a considerable period. He contends that the second respondent has no jurisdiction to recognize the third respondent as a hereditary trustee.

The third respondent filed a counter-affidavit. He states that the writ petition is not maintainable and it is barred by laches. He asserts that the temple was brought about by his ancestors and that he developed the same with his hard work and contribution. The impugned order is sought to be justified by stating that the second respondent is vested with the jurisdiction to recognize the members of the founder trustees of the temple. Reference is made to orders passed in several writ petitions.

Heard the learned counsel for the petitioner, the learned Government Pleader for Endowments and the learned counsel for the third respondent.

The petitioner challenges the order, dated 25.03.1998, on the ground that the second respondent does not have the jurisdiction to pass the same. It is true

that the writ petition is filed nearly six years after the said order came to be passed. In the ordinary course, the writ petition deserves to be rejected as barred by laches. However, since the petitioner is neither an adversary to the third respondent nor claiming any interest of his own in the temple, the writ petition cannot be rejected, on that ground. Further, the contentions of the petitioner are mostly on the grounds of law, than on facts.

The question as to whether the Assistant Commissioner of Endowments had the jurisdiction to adjudicate the claims of founder trustees or members of founder families came to be considered in several writ petitions. The controversy no longer subsists, in view of the amendment to Section 87 of the A.P. Charitable and Hindu Religious Institutions & Endowments Act, 1987 (for short 'the Act'), by adding clause (h) in sub-section (1) thereof. That amendment, however, was effected only in the year 2002. The impugned order was passed earlier thereto.

In *Prathi Subbaiah Chetty v. Government of Andhra Pradesh*, a Division Bench of this Court dealt with this question. The controversy in that case related to a period, anterior to the amendment to Section 87. It was in that context that the Division Bench held that the Assistant Commissioner, the Deputy Commissioner or the Commissioner, as the case may be, depending on the classification of the institutions, are entitled to appoint the trustees, including a founder trustee, by making enquiry, if there are rival claims. This was followed by a learned Single Judge in his Judgment dated 07.02.2003 in W.P.No.12918 of 2002. However, a totally different view was taken in a Judgment dated 24.12.2003 in W.P.No.26390 of 2003. It was held that the amendment to Section 87 of the Act cannot be said to be prospective alone. The proceedings challenged in that writ petition, which were passed by the Assistant Commissioner before the amendment, were held to be valid. It is, however, difficult to subscribe to the view that the amendment to Section 87 had any retrospective effect. Therefore, in view of the judgment in *Prathi Subbaiah Chetty's case* (1 supra), it cannot be said that the second respondent did not have the jurisdiction to pass the impugned order. On this ground, however, it cannot be said that the grievance of the petitioner cannot be redressed at all.

In case, the petitioner is able to establish that the third respondent does not hail from a founder family, he can, certainly, satisfy the jurisdictional Deputy

Commissioner of Endowments by pleading necessary facts. The law, as it stands now, provides for adjudication of such disputes, under Section 87(1)(h) of the Act. It is not as if the impugned order operates as a bar or as *res judicata* in such proceedings. The petitioner had already filed O.A.No.100 of 2004 before the first respondent in this regard. He can pursue the same.

It is strongly urged that the petitioner is assuming that the entire management of the temple to himself and preventing others from participating in it. Section 15 of the Act provides for constitution of Trust Boards of varying strength, depending on the classification of the temple or the institution. The temple, in question, is said to be the one falling into clause (c) of Section 6 of the Act. Under sub-Section (3) of Section 15, the Board of Trustees of such temple shall comprise of three persons. The second respondent is empowered to constitute such Trust Boards. Even assuming that the third respondent, as of now, is a recognized member of founder family, he can be made the head of such Board.

In view of the above discussion, the writ petition is disposed of directing that –

a. The first respondent shall dispose of O.A.No.100 of 2004 filed by the petitioner under Section 87(1) of the Act within a period of six months from the date of receipt of a copy of this order;

b. The second respondent shall take immediate steps for constitution of a Trust Board in accordance with the relevant provisions of the Act for the said temple and constitute such a Board within a period of two months from the date of receipt of a copy of this order, duly including the 3rd respondent in it.

c. Till the second respondent constitutes the Board, the third respondent shall not incur any expenditure out of the funds of the temple, exceeding Rs.1,000/- (Rupees One thousand only), without the prior approval of the second respondent and shall not alienate or otherwise encumber the properties, if any, belonging to the temple;

d. There shall be no order as to costs.

18.02.2005

ksld

To

1 The Deputy Commissioner of Endowments, Hyderabad, Tilak Road,

Hyderabad.
2 The Asst. Commissioner of Endowments, Nalgonda District,

Nalgonda.
3 Two CCs. to the G.P. for Endowments, High Court of A.P.,

Hyderabad (OUT).

4. Two CD copies.

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

P.D. JUDGMENT IN

WRIT PETITION NO : 24446 of 2004

FOR PRONOUNCEMNET